

**Andover Conservation Commission Meeting Minutes
September 21, 2011**

Town of Andover
36 Bartlett Street
3rd Floor Conference Room
7:46pm

Conservation Commission Members in Attendance:

Chairman Donald Cooper, Vice Chairman Michael Walsh, Commissioner Alix Driscoll, Commissioner Jon Honea, Commissioner Floyd Greenwood and Commissioner Kevin Porter. Staff Members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

177 High Plain Road

Present in Interest: Charlie Gallant

Staff Recommendation: Approve as Neg.3 and Neg.6

Public Meeting on the Request for Determination of Applicability filed to determine if the proposed construction of a replacement septic system is subject to the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law.

Agent Cleary presented this to the Commission. The filing is under the WPA only and no waivers have been requested or are required. The project fully complies with our setback requirements for work within the Fish Brook Watershed Protection Overlay District. The tank is further than 50 feet from the BVW and the SAS maintains the minimum 100 foot setback. Yard waste has been deposited in the BVW and should cease immediately.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to Approve as Neg.3 and Neg.6, it was seconded by Vice Chairman Walsh and unanimously approved.

Lucerne Drive

Present in Interest: Steve Ericksen, Sheilah Knowles and Damien Glynn

Staff Recommendation: Close public hearing and issue Order of Conditions.

Continued Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or Andover Wetlands Protection By-Law to cut trees, shrubs and vegetation, including construction of a proposed deck, shed, above ground pool, screen house, fence and utilities.

Agent Cleary presented this to the Commission. This was continued from September 6, 2011 for purposes of submitting a revised plan. The filing is under the WPA only and is the result of an Enforcement Order issued on July 5, 2011 for clearing a BVW. The original work was the construction of a deck only. When staff arrived on site, work had already begun with clearing in the wetland.

The original Notice of Intent has been withdrawn as the Applicant has hired Norse Environmental to do a new delineation and further construction. Waivers are requested for not complying with the 25 foot no-disturb line; not meeting the 25 foot setback for proposed fence (placed at 11 feet); not meeting the 35 foot setback for pools (placed at 18 feet); not meeting the 50 foot setback for the proposed shed, deck and gazebo (placed at 45 feet, 23 feet and 11 feet, respectively); and non-depiction of the 25 foot, 50 feet and 100 foot buffer zone on the plan. Mr. Eriksen agreed to revise the plan to show the 25, 50 and 100 foot buffer zones on the plan. Staff agrees with the "B" series flagging. Bounds should be installed on the erosion control line at Flag #9B, 8B, 6B and 2B. Staff also would like to see more plantings in place between Flags 1B and 6B.

Mr. Eriksen informed the Commission that 5 or 6 different species will be planted and the area is already growing back to a vegetated state. The work includes a privacy fence along the boundary line, screen house, pool, shed and a 16' x 20' deck. There will be a small amount of grading to level off the yard for the safety of Ms. Knowles elderly parents. The remaining area will be lawn area. If the bounds are moved to the erosion control line, the closest building will only be 9 feet from the wetland. The house has never met the 50 foot setback. Mr. Eriksen agreed to move the screen house further from the wetland.

Commissioner Driscoll would like to see the violation of clearing the wetland fixed before any other work is commenced.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to close the public hearing and issue the Order of Conditions with the following additions: 1) pool and screen porch to be moved a minimum of 25 feet from the no-disturb line; 2) erosion control line to be moved out 5 feet along the entire line to become the no-disturb line; 3) markers to be placed per staff determination and will become the monumented no-disturb line; 4) more plantings between Flags 1B and 6B before commencement of construction; 5) site monitor to be in place; 6) deck OK at 23 feet from wetland; and 7) revised plan to be submitted. The Motion was seconded by Commissioner Greenwood and unanimously approved.

2 Porter Road

Staff Recommendation: Continue to October 4, 2011

Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for construction of single family homes and associated utilities.

The Eagle Tribune had an error in production and did not run the advertisement with five days. Moved to Agenda for October 4, 2011.

Mass Bay Commuter Railroad Company

Present in Interest: Samantha Hart, Jack Connors and Stephanie Jones

Staff Recommendation: Continue for DEP comments

Public Hearing on a Notice of Intent filed under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law for work encompassing track installation within the existing MBTA railroad right-of-way from the Tewksbury/Andover town line north to Tewksbury Station at Ballardvale Commuter Rail Station in Andover.

Agent Cleary presented this to the Commission. The filing is exempt from the By-Law. This is under review by DEP. More federal funding became available to do more track work. This will be an extension of the work already being done. The Commission will need to decide if the following waivers should be requested in writing: 1) stamped professionally prepared plan; 2) relief from complying with all 10 stormwater management standards; 3) fueling within 100 foot buffer zone; 4) lack of Natural Resources Conservation Service Soil Map; and 5) compliance with Commission's setbacks. The work is being done in a disturbed area of the MBTA's Right of Way for the installation of new track within several resource areas, Riverfront, Bordering Land Subject to Flooding, Bordering Vegetated Wetland, etc.

Commissioner Greenwood commented that there are not nearly as many abutters in this section as the previous work area.

Commissioner Driscoll questioned the endangered species habitat in this area. There is a mapped moth habitat, but it is not in the Right of Way. How will the habitats be protected? All of the work will occur on the elevated railroad bed within the Right of Way.

Stephanie Jones is an abutter at 200 Andover Street present at the hearing.

MBTA must address the following issues:

1. Presumption under WPA for Riverfront;
2. Natural Heritage
3. Fueling within 100 feet of buffer zone;
4. No stockpiling

Commissioner Greenwood will contact Jack Connors directly regarding gating to deter dirt bikes on trails without cutting off access.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to continue to October 4, 2011 at 8:15pm, it was seconded by Commissioner Driscoll and unanimously approved.

ACTION ITEMS:

5 Newport Circle

Present in Interest: Bill MacLeod and Ralph Salatinis

Consideration of significance for change and size to swimming pool shape.

This property's replication is not complete and the retaining wall is built too close to the tree line. How will the wetland be protected?

Commissioner Greenwood commented that the Commission has difficulty separating the two issues of unapproved clearing on this lot and this application. The entire project changed as a result of the tree cutting due to lot line changes. Plan shows proposed tree line but when our inspector went to the site, the tree line was not there and the lot exceeded the square footage allowed.

Mr. MacLeod reminded the Commission that the only application before them is the change in shape of the pool and retaining wall, which meet all setback requirements. The project was originally approved, then sold to Newport of Andover LLC, who did the clearing of the lots and roadways and built the detention pond. The property was foreclosed on and Mr. Kitsakos bought it back and brought the project into compliance. The lot was sold and plan revised to add the pool. The Notice of Intent stated "clearing to haybales" and "in event proposed development exceeds the above allowance it is homeowners responsibility for stormwater runoff mitigation"...it never mentions replication. The clearing done by Newport of Andover LLC, not the current lot owner. The change in pool has no impact on the wetland and if replication needs to be done, the pool will not interfere.

Commissioner Greenwood believes the original Order of Conditions did not provide a provision for more cutting of trees, but the intent was to protect the WOPD and the contiguous wetland and upland which provided a benefit to WOPD.

Agent Cleary reminded the Commission that the agreement at the construction meeting was to stabilize the area before the fall growing season.

Commissioner Honea asked that since the Amendment was coming before the Commission at the next meeting couldn't the Commission approve the new shape of the pool and leave everything else as a violation.

Commissioner Greenwood made a Motion to table the decision to October 4, 2011 to consider with the violations, it was seconded by Commissioner Driscoll and unanimously approved.

14 Gavin Circle

Staff Recommendation: Insignificant

Consideration of Significance for removal of unsafe shed and replace with identical size shed resting on patio blocks.

Vice Chairman Walsh made a Motion to find the change Insignificant, it was seconded by Commissioner Driscoll and unanimously approved.

13-17 Boutwell Road

Staff Recommendation: Approve letter

Request for an Extension to the Order of Conditions. Letter to be forwarded to Applicant granting extension.

Commissioner Driscoll made a Motion to approve the letter, it was seconded by Vice Chairman Walsh and unanimously approved.

CONSENT AGENDA

9 Ballardvale Road

Issuance of Certificate of Compliance.

Upon visiting the site, there have been substantial changes from the As-Built Plan submitted and there are items missing on the plan as well. Commissioner Porter visited the site and found the patio to meet the setback, however the walkway was different and a planter is used to stop the cars from driving into the wetland.

Mr. Douglas will send a letter to the engineering firm regarding submitting a plan without all the required features. Chairman Cooper added that there will be a one day \$200 violation levied because the plan submitted was woefully inadequate, "done so negligently that they missed obvious features on the ground in violation of the WPA and our local By-Law".

Vice Chairman Walsh made a Motion to Approve the letter and fine, it was seconded by Commissioner Driscoll and unanimously approved.

18 Shawsheen Road

Issuance of a Notification of Satisfactory Completion of Work Certificate.

Vice Chairman Walsh made a Motion to Approve, it was seconded by Commissioner Greenwood and unanimously approved.

The next meeting will be held October 4, 2011 at 7:45pm.

The meeting was adjourned at 9:25pm by Motion of Vice Chairman Walsh, seconded by Commissioner Honea and unanimously approved.

Respectfully submitted by:

**Lynn Viselli,
Recording Secretary**